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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN R. SCHRUBB,
Plaintiff,

v.

F.N.U. JAGER; D. RUSK; F.N.U.
HOFFMAN; L. MCCUMSEY; P.
QUINN; P.T. SMITH; ROBERT A.
HOREL; K.J. ALLEN; N. GRANNIS;
Defendants.

No. C 13-4163 JSW (PR)

ORDER OF SERVICE

INTRODUCTION

Plaintiff, a California prisoner at Salinas Valley State Prison, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against officials at Pelican Bay State Prison, where Plaintiff was formerly incarcerated. His application to proceed *in forma pauperis* is granted in a separate order. The complaint is served upon certain defendants based upon the claims found cognizable below. The remaining claims are dismissed.

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief

1 may be granted, or seek monetary relief from a defendant who is immune from such
2 relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v.*
3 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

4 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
5 of the claim showing that the pleader is entitled to relief." "Specific facts are not
6 necessary; the statement need only "give the defendant fair notice of what the claim
7 is and the grounds upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
8 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
9 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
10 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
11 recitation of the elements of a cause of action will not do. . . . Factual allegations must
12 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
13 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
14 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
15 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
16 699 (9th Cir. 1990).

17 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
18 (1) that a right secured by the Constitution or laws of the United States was violated, and
19 (2) that the alleged violation was committed by a person acting under the color of state
20 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

21 LEGAL CLAIMS

22 Plaintiff claims that Defendants delayed his access to photocopying and mailing
23 his petition for a writ of habeas corpus, which resulted in the petition being denied as
24 untimely in both state and federal courts. He claims that this violated his constitutional
25 rights of freedom of speech, access to the courts, equal protection, and due process. He
26 also claims a violation of state tort laws. When liberally construed, these claims are
27 cognizable.

28 He also claims that the denial of his administrative grievances violated his

1 constitutional right to due process. Such claims are not cognizable because there is no
2 constitutional right to a grievance procedure in prison. *See Ramirez v. Galaza*, 334 F.3d
3 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988).

4 CONCLUSION

5 For the reasons set out above, the Court orders as follows:

6 1. The claims regarding the improper processing of administrative appeals are
7 DISMISSED.

8 2. The Clerk of the Court shall issue summons and the United States Marshal
9 shall serve, without prepayment of fees, a copy of the complaint and all attachments
10 thereto, and a copy of this order upon Defendants **F.N.U. Jager; D. Rusk; F.N.U.**
11 **Hoffman; L. McCumsey; P. Quinn; P.T. Smith;** and **Robert A. Horel at Pelican Bay**
12 **State Prison**, and upon Defendants **K.J. Allen and N. Grannis at the California**
13 **Department of Corrections and Rehabilitation in Sacramento, California.**

14 The Clerk shall also mail a courtesy copy of the complaint with all attachments
15 thereto, and this order to the California Attorney General's Office.

16 The Clerk shall also serve a copy of this order on Plaintiff.

17 3. Defendants shall file an answer to the complaint in accordance with the
18 Federal Rules of Civil Procedure.

19 4. In order to expedite the resolution of this case:

20 a. No later than **91 days** from the date this order is filed, defendants shall
21 file a motion for summary judgment or other dispositive motion. If defendants are of the
22 opinion that this case cannot be resolved by summary judgment, they shall so inform the
23 court prior to the date the summary judgment motion is due. All papers filed with the
24 court shall be promptly served on the plaintiff.

25 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with
26 the court and served upon defendants no later than **28 days** from the date of service of
27 the motion. Plaintiff must read the attached page headed "NOTICE -- WARNING,"
28 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.

1 1998) (en banc), and *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

2 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed
3 to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
4 plaintiff should take note of the attached page headed “NOTICE -- WARNING
5 (EXHAUSTION),” which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d
6 1108, 1120 n. 4 (9th Cir.), *cert. denied*, *Alameida v. Wyatt*, 124 S.Ct 50 (2003).

7 c. Defendants **shall** file a reply brief no later than **14 days** after the date of
8 service of the opposition.

9 d. The motion shall be deemed submitted as of the date the reply brief is
10 due. No hearing will be held on the motion unless the court so orders at a later date.

11 e. Along with their motion, defendants shall proof that they served
12 plaintiff the applicable warning(s) required by *Woods v. Carey*, No. 09-15548, slip op.
13 7871 (9th Cir. July 6, 2012) and/or *Stratton v. Buck*, No. 10-35656, slip op. 11477 (9th
14 Cir. Sept. 19, 2012), at the same time they served him with their motion. Failure to do so
15 will result in the summary dismissal of their motion without prejudice.

16 5. All communications by the plaintiff with the court must be served on
17 defendant, or defendant’s counsel once counsel has been designated, by mailing a true
18 copy of the document to defendant or defendant’s counsel.

19 6. Discovery may be taken in accordance with the Federal Rules of Civil
20 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or
21 Local Rule 16-1 is required before the parties may conduct discovery.

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 KEVIN SCHRUBB,

6 Plaintiff,

7 v.

8 F.N.U. JAGER et al,

9 Defendant.
10 _____/

Case Number: CV13-04163 JSW


CERTIFICATE OF SERVICE

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on December 9, 2013, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Kevin Ray Schrubb V-55932
18 Salinas Valley State Prison
19 B5-150
20 P.O. Box 1050
21 Soledad, CA 93960-1060

22 Dated: December 9, 2013


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk